REMARKS

Claims 1-44 are pending in the present application. Claims 3, 9, 10, 13-19, 21, 22, 25-39 and 42-44 have been withdrawn as not reading on the elected group. Accordingly, claims 1, 2, 4-8, 11, 12, 20, 23, 24, 40 and 41 remain at issue.

In the office action the Examiner rejected claims 1-2, 4-8, 11-12, 20, 23-24 and 40-41 under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. Pub. No. 2002/0126036 to Flaherty et al. ("Flaherty") or U.S. Pat. Pub. No. 2002/0143290 to Bui et al. ("Bui"). The Examiner also rejected claims 1-2, 4-8, 11-12, 20, 23-24 and 40-41 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5,885,245 to Lynch et al. ("Lynch") or U.S. Pat. No. 5,935,099 to Peterson et al. ("Peterson"). Applicant respectfully traverses these rejections.

Rejection of Claims Under 35 U.S.C. § 102(e) by Bui

The Applicant respectfully submits that the relevant subject matter of U.S. Pat. Pub. No. 2002/0143290 to Bui is not prior art to the present application. Applicant's application and U.S. Pat. Pub. No. 2002/0143290 to Bui have the same filing date. Further, while U.S. Pat. Pub. No. 2002/0143290 to Bui is a CIP application that contains priority from earlier filed applications, the relevant disclosure in U.S. Pat. Pub. No. 2002/0143290 to Bui relating to sensors was disclosed for the first time in the filing of the U.S. Pat. Pub. No. 2002/0143290. Accordingly, the relevant subject matter of U.S. Pat. Pub. No. 2002/0143290 is not properly prior art under 35 U.S.C. § 102, and the present rejection should be withdrawn.

Initial Response to the Omnibus Rejections

In the office action the Examiner merely cited the statutory basis for the rejection, identified the reference number, and then copied the language from Applicant's claim 1 and generically stated that the references teach the copied claim language. The Examiner, however, did not provide any specific ground for the rejection or reference to the particular part of the cited art as required by MPEP 706.02(i) and MPEP 707.07(d). The MPEP expressly states that the "particular part of the reference relied upon to support the rejection should be identified." MPEP 706.02(i). In this case

the Examiner did not reference any portion of the cited references. Instead, as explained above, the Examiner merely provided an omnibus rejection. As stated in MPEP 707.07(d), this type of rejection is "not informative and should therefore be avoided. Copies of the relevant MPEP sections are attached hereto as Attachment A.

Because the Examiner did not identify the "particular part of the reference relied upon to support the rejection," as required by the MPEP, the Applicant has no way of knowing the specific grounds for the rejections. Accordingly, the Applicant requests that the Examiner reissue the non-final office action and specifically point out the portions of the references relied upon in the rejections.

Rejection of Claims Under 35 U.S.C. §§ 102(e) and (b) by Flaherty, Lynch and Peterson

The Examiner rejected claims 1-2, 4-8, 11-12, 20, 23-24 and 40-41 under 35 U.S.C. §102(e) as being anticipated Flaherty, and under 35 U.S.C. §102(b) as being anticipated Lynch or Peterson. As explained above, the Examiner did not point out any particular portion of these references that was relied upon in the rejections. In light of the fact that the Examiner did not point out any particular portion of these references that was relied upon in the rejections, and because the recitation of Applicant's claims is so distinct from the teaching of these disclosures, Applicant is unable to respond as to the merits of this rejection. Thus, Applicant respectfully requests the Examiner to reissue a non-final action that particularly points out the portions of the references that the Examiner is relying on in each of the claim rejections.

Provisional Double Patenting Rejection

If, and when, it is found that a double patenting rejection based on patented claims is valid, Applicant will respond at that time.

CONCLUSION

In view of the present condition of the claims and the foregoing remarks, it is submitted this application is in condition for allowance. Such action is respectfully requested. Further, the Examiner is requested to contact the undersigned if the Examiner has any questions concerning this Response or if it will expedite the progress of this application.

Respectfully submitted,

Dated: October 28, 2003

By: _____

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Express Mail Label No. EL999652336US
Date of Deposit: October 28, 2003
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.

_____
Sarah J. Goodnight (186336.1)

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PATENT & TRADEMARK OFFICE

35 U.S.C. 122(b), the confidential status of applications under 35 U.S.C. 122(a) must be maintained and no rejection can be made relying on the earlier filed application as prior art under 35 U.S.C. 102(e). If the filing dates of the applications are within 6 months of each other (3 months for simple subject matter) then interference may be proper. See MPEP Chapter 2300. If the application with the earliest effective U.S. filing date will not be published pursuant to 35 U.S.C. 122(b), it must be allowed to issue once all the statutory requirements are met. After the patent is published, it may be used as a reference in a rejection under 35 U.S.C. 102(e) in the still pending application as appropriate. See MPEP § 706.02(a) and § 2136 *et seq.*

706.02(g) Rejections Under 35 U.S.C. 102(f)

35 U.S.C. 102(f) bars the issuance of a patent where an applicant did not invent the subject matter being claimed and sought to be patented. See also 35 U.S.C. 101, which requires that whoever invents or discovers is the party who may obtain a patent for the particular invention or discovery. The examiner must presume the applicants are the proper inventors unless there is proof that another made the invention and that applicant derived the invention from the true inventor.

See MPEP § 2137 - § 2137.02 for more information on the substantive requirements of rejections under 35 U.S.C. 102(f).

706.02(h) Rejections Under 35 U.S.C. 102(g)

35 U.S.C. 102(g) bars the issuance of a patent where another made the invention in the United States before applicant and had not abandoned, suppressed, or concealed it. This section of 35 U.S.C. 102 forms a basis for interference practice. See MPEP Chapter 2300 for more information on interference procedure. See MPEP § 2138 - § 2138.06 for more information on the requirements of 35 U.S.C. 102(g).

706.02(i) Form Paragraphs for Use in Rejections Under 35 U.S.C. 102

The following form paragraphs should be used in making the appropriate rejections.

Note that the particular part of the reference relied upon to support the rejection should be identified.

¶ 7.07 Statement of Statutory Basis, 35 U.S.C. 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

Examiner Note:

1. The statute is no longer being re-cited in all Office actions. It is only required in first actions on the merits and final rejections. Where the statute is not being cited in an action on the merits, use form paragraph 7.103.
2. Form paragraphs 7.07 to 7.14 are to be used ONLY ONCE per a given Office action.

¶ 7.08 102(a), Activity by Another Before Invention by Applicant

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Examiner Note:

This form paragraph must be preceded by form paragraph 7.07.

¶ 7.09 102(b), Activity More Than One Year Prior to Filing

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Examiner Note:

This form paragraph must be preceded by paragraph form 7.07, and may be preceded by form paragraph 7.08.

¶ 7.10 102(c), Invention Abandoned

(c) he has abandoned the invention.

Examiner Note:

This form paragraph must be preceded by form paragraph 7.07, and may be preceded by one or more of form paragraphs 7.08 and 7.09.

¶ 7.11 102(d), Foreign Patenting

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

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ATTACHMENT A

Decisions found only in patented files should be cited only when there is no published decision on the same point.

When a Commissioner's order, notice or memorandum not yet incorporated into this manual is cited in any official action, the title and date of the order, notice or memorandum should be given. When appropriate other data, such as a specific issue of the *Journal of the Patent and Trademark Office Society* or of the *Official Gazette* in which the same may be found, should also be given.

707.07 Completeness and Clarity of Examiner's Action

37 CFR 1.104. Nature of examination.

*****

(b) *Completeness of examiner's action.* The examiner's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

*****

707.07(a) Complete Action on Formal Matters

Forms are placed in informal applications listing informalities noted by the Draftsperson (form PTO-948) and the Office of Initial Patent Examination (form PTO-152). Each of these forms comprises an original for the file record and a copy to be mailed to applicant as a part of the examiner's first action. They are specifically referred to as attachments to the action and are marked with its paper number. In every instance where these forms are to be used, they should be mailed with the examiner's *first* action, and any additional formal requirements which the examiner desires to make should be included in the *first* action.

When any formal requirement is made in an examiner's action, that action should, in all cases where it indicates allowable subject matter, call attention to 37 CFR 1.111(b) and state that a complete reply must either comply with all formal requirements or specifically traverse each requirement not complied with.

¶ 7.43.03 Allowable Subject Matter, Formal Requirements Outstanding

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Examiner Note:

This paragraph would be appropriate when changes must be made prior to allowance. For example, when there is a requirement for drawing corrections that have to be submitted for approval or when corrections to the specification have to be made prior to allowance.

707.07(b) Requiring New Oath

See MPEP § 602.02.

707.07(c) Draftsperson's Requirement

See MPEP § 707.07(a); also MPEP § 608.02(a), (e), and (s).

707.07(d) Language To Be Used In Rejecting Claims

Where a claim is refused for any reason relating to the merits thereof it should be "rejected" and the ground of rejection fully and clearly stated, and the word "reject" must be used. The examiner should designate the *statutory basis* for any ground of rejection by express reference to a section of 35 U.S.C. in the opening sentence of each ground of rejection. If the claim is rejected as broader than the enabling disclosure, the reason for so holding should be given; if rejected as indefinite the examiner should point out wherein the indefiniteness resides; or if rejected as incomplete, the element or elements lacking should be specified, or the applicant be otherwise advised as to what the claim requires to render it complete.

See MPEP § 706.02 (i), (j), and (m) for language to be used.

Everything of a personal nature must be avoided. Whatever may be the examiner's view as to the utter lack of patentable merit in the disclosure of the application examined, he or she should not express in the record the opinion that the application is, or appears to be, devoid of patentable subject matter. Nor should he or she express doubts as to the allowability of allowed claims or state that every doubt has been resolved in favor of the applicant in granting him or her the claims allowed.

The examiner should, as a part of the first Office action on the merits, identify any claims which he or she judges, as presently recited, to be allowable and/or should suggest any way in which he or she considers that rejected claims may be amended to make them allowable. If the examiner does not do this, then by implication it will be understood by the applicant or his or her attorney or agent that in the examiner's opinion, as presently advised, there appears to be no allowable claim nor anything patentable in the subject matter to which the claims are directed.

IMPROPERLY EXPRESSED REJECTIONS

An omnibus rejection of the claim "on the references and for the reasons of record" is stereotyped and usually not informative and should therefore be avoided. This is especially true where certain claims have been rejected on one ground and other claims on another ground.

A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

707.07(e) Note All Outstanding Requirements

In taking up an amended application for action the examiner should note in every letter all the requirements outstanding against the application. Every point in the prior action of an examiner which is still applicable must be repeated or referred to, to prevent the implied waiver of the *requirement*. Such requirements include requirements for information under 37 CFR 1.105 and MPEP § 704.10; however the examiner should determine whether any such requirement has been satisfied by a negative reply under 37 CFR 1.105(a)(3).

As soon as allowable subject matter is found, correction of all informalities then present should be *required*.

707.07(f) Answer All Material Traversed

Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.

Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

If a rejection of record is to be applied to a new or amended claim, specific identification of that ground of rejection, as by citation of the paragraph in the former Office letter in which the rejection was originally stated, should be given.

ANSWERING ASSERTED ADVANTAGES

After an Office action, the reply (in addition to making amendments, etc.) may frequently include arguments and affidavits to the effect that the prior art cited by the examiner does not teach how to obtain or does not inherently yield one or more advantages (new or improved results, functions or effects), which advantages are urged to warrant issue of a patent on the allegedly novel subject matter claimed.

If it is the examiner's considered opinion that the asserted advantages are not sufficient to overcome the rejection(s) of record, he or she should state the reasons for his or her position in the record, preferably in the action following the assertion or argument relative to such advantages. By so doing the applicant will know that the asserted advantages have actually been considered by the examiner and, if appeal is taken, the Board of Patent Appeals and Interferences will also be advised. See MPEP § 716 *et seq.* for the treatment of affidavits and declarations under 37 CFR 1.132.

The importance of answering applicant's arguments is illustrated by *In re Herrmann*, 261 F.2d 598, 120 USPQ 182 (CCPA 1958) where the applicant urged that the subject matter claimed produced new and useful results. The court noted that since applicant's statement of advantages was not questioned by the examiner or the Board of Appeals, it was constrained to accept the statement at face value and therefore found certain claims to be allowable. See also *In re Soni*, 54 F.3d 746, 751, 34 USPQ2d 1684, 1688 (Fed. Cir. 1995) (Office failed to rebut applicant's argument).

Form paragraphs 7.37 through 7.38 may be used where applicant's arguments are not persuasive or are moot.

¶ 7.37 Arguments Are Not Persuasive

Applicant's arguments filed **[1]** have been fully considered but they are not persuasive. **[2]**

Examiner N te: